

REMARKS

Claims 1, 2, and 5-68 were pending in the current application. Applicants have amended claims 6, 28-31, 39, 61, 63, 67 and 68. Reexamination and reconsideration of all pending claims, as amended, are respectfully requested.

Applicants acknowledge and appreciate the indication of allowability for claims 1, 2, 5, 45-60, 64 and 66 of the present application.

35 U.S.C. §103

Independent claims 1, 5, 6, 28-32, 39, 40, 44, 45, 56, 57, 59, 61, 63, 64, and 66-68 are pending in the application. Independent claims indicated as allowable include claims 1, 5, 45, 56, 57, 59, 64, and 66. Rejected independent claims therefore include claims 6, 28-32, 39, 40, 44, 61, 63, 67, and 68.

The Office Action rejected claims 6-8, 10, 28-31, 39, 61, 63, 67, and 68, including independent claims 6, 28-31, 39, 61, 63, 67, and 68, under 35 U.S.C. §103 based on Sakakura et al., U.S. Patent 5,357,557 ("Sakakura") in view of Engbersen, U.S. Patent 6,031,845¹ ("Engbersen"). The Office Action rejected dependent claims 62 and 65 under 35 U.S.C. §103 based on Sakakura in view of Engbersen and in further view of Kobayashi, U.S. Patent 6,333,932 ("Kobayashi"). The Office Action rejected dependent claims 11-13, 15-20, 22, 23, and 25-27 under 35 U.S.C. §103 based on Sakakura in view of Engbersen as applied to claim 8 and further in view of Kobayashi. The Office Action rejected claims 32-33 and 35-38, including independent claim 32, under 35 U.S.C. §103 based on Numminen et al., U.S. Patent 6,687,499 ("Numminen") in view of Walding, U.S. Patent 6,031,845 ("Walding") in further view of Dipperstein, U.S. Patent 6,185,191 ("Dipperstein") and in still further view of Gillespie, U.S. Patent 6,014,377 ("Gillespie"). The Office Action

¹ The Office Action at p. 2 once again cites this '845 patent number as "Engbersen," but this '845 patent number is for the patent issued to Walding. Applicants have reviewed the rejection based on Engbersen at pp. 2-7 of the Office Action and believe this to be based on Engbersen, U.S. Patent 5,271,000, identified in the PTO-892 attached to the prior January 23, 2009 Office Action. Applicants again submit this is a clerical error and reference and distinguish based on this Engbersen '000 document in the present Response.

rejected dependent claim 34 under 35 U.S.C. §103 based on Numminen in view of Walding in further view of Dipperstein and in still further view of Gillespie and in yet further view of Gopalakrishnan et al., U.S. Patent 7,110,466 (“Gopalakrishnan”). The Office Action rejected claims 59 and 60, including independent claim 59, under 35 U.S.C. §103 based on Numminen in view of Tiedemann Jr. et al., U.S. Patent 5,802,105 (“Tiedemann”). The Office Action rejected dependent claim 9 under 35 U.S.C. §103 based on Sakakura in view of Engbersen and in further view of Funk, U.S. Patent 6,766,164 (“Funk”). The Office Action rejected dependent claim 24 under 35 U.S.C. §103 based on Sakakura in view of Engbersen and in further view of Buchholz, U.S. Patent 5,555,266 (“Buchholz”).

The Office Action rejected claims 61-63, and 65, including independent claims 61 and 63, under 35 U.S.C. §103 based on Numminen in view of Kobayashi and in further view of Sjoblom, U.S. Patent Publication 2002/0009053 (“Sjoblom”). The Office Action rejected claims 40-44, including independent claims 40 and 44, under 35 U.S.C. §103 based on Numminen in view of Oommen, U.S. Patent 6,799,203 (“Oommen”) and in further view of Tiedemann. The Office Action rejected dependent claims 14 and 21 under 35 U.S.C. §103 based on Sakakura in view of Engbersen and further in view of Kobayashi.

Applicants initially note that certain pending claims have been rejected on the basis of as many as five separate references. Applicants submit that rejection of any claim based on as many as five separate references demonstrates hindsight reconstruction of the invention, which is improper. “A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning.” *KSR International Co. v. Teleflex Inc.*, No. 04-1350, 550 U.S. ____ (2007). Applicants submit that the present Office Action relies extensively on ex post reasoning, which is improper.

Independent Claims 6, 28-31, 39, 61, 63, 67, and 68 – Sakakura in view of Engbersen

Sakakura illustrates an inter-mobile terminal testing method in a cellular automobile telephone system. Most notably, Applicants note that the test data provided in the Sakakura is “predetermined pattern data” with the example given being “100111001”. Sakakura, col.

3, ll. 1-2. The Sakakura design is essentially a “daisy chain” of test data transmissions from one terminal to the next, and the next, and so forth. The test data/test pattern is evaluated and the validity of the Sakakura test pattern received is assessed, i.e. determined “valid” or “invalid.” Sakakura, col. 3, ll. 29.

The contents of the Sakakura test data are shown in FIG. 4, and include “self-test sequence information, accumulated test result information, and test data ‘100111001’.”- Sakakura, col. 3, ll. 20-24.

Engbersen is relied on to show “parameter values for each test packet comprise at least one of a serving sector from which the test packet was received, a sequence number of the test packet, and a length of the test packet...” Office Action, p. 3. Engbersen shows a “transputer” and the cited passage states that the transputer “either performs statistical computations (e.g. counting of the faulty events) or initiates control commands for the hardware...” Engbersen, col. 19, ll. 17-20.

With respect to claim 6, Applicants have amended claim 6 to recite “receiving a first data transmission comprising test packets of known test data via a first channel during an observation interval; identifying parameter values ... received in the first data transmission during the observation interval ... [and] forming a second data transmission comprising the identified parameter values for test packets received during the observation interval...”

The concept of an observation interval, identifying parameter values for test packets received during the observation interval, and forming a second data transmission comprising the identified parameter values for test packets received during the observation interval are neither disclosed nor suggested by Sakakura and/or Engbersen, alone or in combination. Neither cited reference accounts for an observation interval in the manner claimed, and both references simply forward data (Sakakura) or process or analyze all packets regardless of and without accounting for an observation interval.

As a result, Applicants submit that claim 6 as amended is not obvious in view of the cited Sakakura and Engbersen references. Independent claims 28-31, 39, 61, 63, 67, and 68

have also been amended to restrict the claims to observation intervals. As a result, amended claims 6, 28-31, 39, 61, 63, 67, 68, and claims depending therefrom include limitations not shown in the cited references, alone or in combination, and are therefore allowable in view of the cited references.

Further, Applicants dispute the combination of Sakakura and Engbersen as an improper hindsight reconstruction of the invention, using Applicants' claims as a guide. A full discussion of the impropriety of combining these references is provided below.

For the foregoing reasons, independent claims 6, 28-31, 39, 61, 63, 67, and 68, as amended, are not obvious based on Sakakura in view of Engbersen.

Claims depending from allowable amended independent claims 6, 28-31, 39, 61, 63, 67, and 68 are allowable as they include limitations not shown in the cited references, alone or in combination.

Independent Claims 61 and 63 – Numminen in view of Kobayashi and in further view of Sjoblom

Applicants focus on the following limitations of amended claims 61 and 63:

a controller operative to identify a transmission source and a sequence number of each received test packet and to form a plurality of loop back packets for the plurality of received test packets transmitted during the observation interval, wherein each loop back packet covers zero or more test packets transmitted during the observation interval, and includes the transmission source and the sequence number of any covered test packet (claim 61, as amended)

means for forming a plurality of loop back packets for the plurality of received test packets transmitted during the observation interval, wherein each loop back packet covers zero or more test packets transmitted during

the observation interval, and includes the transmission source and the sequence number of any covered test packet (claim 63, as amended)

As noted, Applicants have amended these limitations to include the “observation interval” limitations. As with Sakakura and Engbersen, none of Numminen, Kobayashi, or Sjoblom show functionality with respect to the claimed observation interval. For this reason, the present claims are not anticipated by the cited references.

Further, the foregoing limitation, prior to the present amendment, was said in the Office Action to be shown by Kobayashi. (*See, e.g.*, Office Action, pp. 20-23). The Kobayashi reference is said to be a “Connectionless Communication System, its Test Method, and Intra-Station Control System.” Kobayashi discusses both wired network operation, including certain aspects such as error logging while in operation, as well as the “test method” referenced in the title.

The passage cited in the Office Action, Col. 2, ll. 55-67 of Kobayashi, merely talks about a destination address (DA) and a source address (SA) as the only pertinent information required in testing the wired network. No mention is made of anything beyond the destination address and the source address of a test packet.

Claims 61 and 63 both require that each test packet “includes the transmission source and the *sequence number* of each covered test packet...” (emphasis added). A sequence number is understood to one skilled in the art and defined to be a specific, unique identifying number, and the present claims require that both a transmission source and a sequence number be provided.

A sequence number is commonly understood to one skilled in the art to simply be an identifying number for one element in the sequence. A definition of “sequence number” as it applies in the computing field may be found at:

lib.daemon.am/Books/www.gerhardmueller.de/docs/UnixCommunicationFacilities/ip/node16.html

A copy of this web page was filed previously.

Kobayashi does provide a DA and an SA in each Kobayashi test packet, but does not show a loop back packet including both the transmission source and the sequence number of each covered packet.

The Office Action finds providing the sequence number in test packets in paragraphs [0023] and [0026] of Sjoblom. Paragraph [0023] of Sjoblom simply says that the node checks whether packets sent are duplicates, but does not state that sequence numbers are employed in any manner in test packets. Applicants first note that Sjoblom does not deal with loop back packets in the cited paragraphs. Further, paragraph [0026] does use the phrase “sequence numbers,” but does not state that sequence numbers are provided in test packets, or that each loop back packet includes the sequence number of each covered test packet. The entirety of the pertinent Sjoblom passage in paragraph [0026] states “test packets are deleted because their *sequence numbers were not in the release message*” (emphasis added). First, this statement confirms the definition of “sequence number” - an identifying number for one element in the sequence - and also confirms that sequence numbers are not in the Sjoblom test packet (again, no loop back packet is shown in Sjoblom), but are specifically in the release message – a completely different entity. This passage does not say that the test packet includes a sequence number. Thus Sjoblom does not show “each loop back packet ... includes the transmission source and the sequence number of each covered test packet” as claimed.

The Office Action responds by alleging that Applicants are attacking the references individually and do not “specifically [point] out how the language of the claims patentably distinguishes them from the references.” Office Action, pp. 44-45.

This is not correct. The Office Action selects certain words from the references such as “sequence number[s]” and “test packets” and fails to consider the specific terminology employed and relationships defined in the claims, citing the three references against the claims when in fact none of the references show what is claimed. To be specific, none of the references, alone or in combination, show “a controller operative to identify a

transmission source and a sequence number of each received test packet and to form a plurality of loop back packets for the plurality of received test packets transmitted during the observation interval, wherein each loop back packet covers zero or more test packets transmitted during the observation interval, and includes the transmission source and the sequence number of any covered test packet...” Applicants can only show how this limitation is missing from the cited references by showing how the limitation is not shown in any of the cited references individually and in combination. The fact that one reference allegedly shows “test packets,” another allegedly shows “sequence numbers,” and a third allegedly shows “loop back packets” does not mean that the combination of the three references shows the specific limitation recited in the claim.

Again, to be clear, Applicants dispute that the cited references show “a controller operative to identify a transmission source and a sequence number of each received test packet and to form a plurality of loop back packets for the plurality of received test packets transmitted during the observation interval, wherein each loop back packet covers zero or more test packets transmitted during the observation interval, and includes the transmission source and the sequence number of any covered test packet...”

Thus these claims are not obvious in view of Numminen, Kobayashi, and Sjoblom. Applicants dispute the combination of these references as discussed in further detail below.

Independent Claim 32 – Numminen in view of Walding in further view of Dipperstein and in still further view of Gillespie

Claim 32 includes a “receiving limitation” and a “configuring limitation,” not shown by the references, alone or in combination. The receiving limitation of claim 32 speaks of possible test settings for one or more auxiliary channels, while the configuring limitation speaks of configuring each auxiliary channel based on test settings applicable to the auxiliary channel. The test settings selected in claim 32 “comprise indications for configuring each auxiliary channel and indications of procedures to be performed by each auxiliary channel during testing...”

Dipperstein

The Office Action cites Dipperstein, col. 3, ll. 11-17 and claims 6, 13, and 14, but Dipperstein simply provides for testing over an ISDN channel, without providing indications for configuring the channel, such as the ISDN channel. The cited passages have nothing to do with configuring a channel but simply discuss parameters of the test being performed. Dipperstein does not disclose or suggest providing indications on configuring a channel, as that term is commonly understood and employed in the current specification.

The Dipperstein passages say nothing about “a first message having included therein test settings selected from a plurality of possible test settings, wherein the test settings selected comprise indications for configuring each auxiliary channel and indications of procedures to be performed by each auxiliary channel during testing ...” as required by claim 32. The cited passages simply say that BERT testing occurs according to a set of options, but does not specify configuration each auxiliary channel and indicating procedures to be performed as required by the express language of the claim. Configuring of a channel is simply missing from the Dipperstein reference discussed in the present specification

The Office Action responds to this issue by equating various elements of Dipperstein with the claimed test settings indications. Office Action, p. 46. These elements cited again do not show what is claimed, but instead are analogous to forcing a square peg into a round hole. The Office Action equates “a list of options” to “test settings indications,” ignoring that the actual limitation is “the test settings selected comprise indications for configuring each auxiliary channel and indications of procedures to be performed by each auxiliary channel during testing” having nothing to do with the Dipperstein “set of options.” Further, the Office Action attempts to equate the test settings limitation with “a command-response message,” which again is not “test settings selected comprise indications for configuring each auxiliary channel and indications of procedures to be performed by each auxiliary channel during testing...” Finally, the Office Action picks out “prescribed test parameter options” from Dipperstein, which are not “test settings selected comprise indications for configuring each auxiliary channel and indications of procedures to be performed by each auxiliary channel during testing” as claimed.

Dipperstein operates without providing indications or functionality for configuring the channel, such as the ISDN channel discussed. The cited passages have nothing to do with configuring a channel but simply discuss the test being performed. Dipperstein does not disclose or suggest providing indications on configuring a channel as expressly required by the claim language (“test settings selected comprise indications *for configuring each auxiliary channel* and indications of procedures to be performed by each auxiliary channel during testing; *configuring each auxiliary channel* based on test settings applicable to the auxiliary channel”; emphasis added) The entire argument at page 46 of the Office Action ignores this language and does not disprove the absence of these limitations from the Dipperstein design.

Again, the cited passages of Dipperstein simply say that BERT testing occurs according to a set of options, but does not specify configuration each auxiliary channel nor indicate procedures to be performed as required by the express language of the claim. Configuring of an auxiliary channel as claimed is simply missing from the Dipperstein reference.

Dipperstein does not include the limitations recited in claim 32.

Numminen

The Office Action further cites Numminen, col. 6, ll. 54-56 and col. 6, l. 66 – col. 7, l. 8 in rejecting the receiving limitation with respect to auxiliary channels. Office Action, pp. 47-49. These passages state that test equipment sends an immediate assignment 503 which may include various instructions for the mobile station. The argument is made that the immediate assignment indicates the contents of the “test octet” and that a value “can be reserved to indicate that in response to the immediate assignment 503 the mobile station has to set itself into a special test mode...” wherein the special test mode includes not informing the MM layer about the link. Numminen, col. 7, ll. 1-12. This does not conform to the claim limitations, which require that the selected test settings “comprise indications for configuring each auxiliary channel and indications of procedures to be performed by each auxiliary channel during testing.” The Office Action cites the CLOSE_Multi-

slot_loop_CMD, which simply indicates a comparison and statistical operation start command associated with the data channel, and has nothing to do with configuring each auxiliary channel based on test settings applicable to the auxiliary channel. In short, Numminen simply sends a test signal, compares the test signal to a known test signal, and does not configure an auxiliary channel based on test settings provided as claimed.

The cited passages simply do not go as far as the Office Action alleges-- the cited Numminen passages merely say that the mobile station to be tested is instructed to maintain a connection on a certain transmission channel. The test settings contents and auxiliary channel configuring based on test settings, required in claim 32, are not shown in the cited Dipperstein and/or Numminen references, alone or in combination.

Regarding the claim 32 configuring limitation, since no test settings as claimed are received, the Numminen mobile device does not configure one or more channels based on selected test settings as test settings are defined in claim 32. The cited passages only say that a start command is issued, the mobile station closes the test loop, and the mobile station acknowledges the message. These passages thus discuss sending a start command, activating the test loop, acknowledging a message, and stopping a timer. These say nothing about configuring a channel or channels based on selected test settings as claimed. Test settings such as those claimed are not employed in the cited passages.

The remaining limitations of claim 32 include the phrase "test settings," and as discussed above, no test settings as claimed are provided in Numminen. For example, Numminen alone, or in combination with Walding, do not disclose "transmitting each configured auxiliary channel in accordance with the applicable test settings..."

The Office Action attempts to fill in these holes by citing a fourth reference, Gillespie. Gillespie purportedly teaches an auxiliary control channel. (Office Action, p. 16) Applicants do not see this in the cited passage, namely Gillespie, Col. 5, ll. 55-58, which describes a cell site controller managing radio channels at the site, supervising calls, turning the radio transmitter on and off, etc. This has nothing to do with the present claims, which again, require "...test settings selected from among a plurality of possible test settings for

one or more auxiliary channels used to carry signaling for data transmission on the forward link for the one or more auxiliary channels, wherein the test settings selected comprise indications for configuring each auxiliary channel and indications of procedures to be performed by each auxiliary channel during testing; configuring each auxiliary channel based on test settings applicable to the auxiliary channel; and transmitting each configured auxiliary channel in accordance with the applicable test settings to test the configured auxiliary channel.” To the extent Gillespie shows anything, it shows managing radio channels at a site, supervising calls, etc., a different application altogether. Gillespie fails to show test settings comprising indications for configuring auxiliary channels, configuring each auxiliary channel based on test settings applicable to the auxiliary channel, and so forth. It is as if Gillespie were selected based on some phrase or wording contained therein. However, no phrase in the cited passage or anywhere in Gillespie shows “testing Auxiliary control channel” as claimed in the Office Action at page 16.

Thus claim 32 is not obvious based on Numminen in view of Walding and in further view of Dipperstein and in still further view of Gillespie. Claims depending from allowable claim 32 are allowable as they include limitations not shown by the combination of Numminen, Walding, Dipperstein, and Gillespie.

Independent Claims 40 and 44 — Numminen in view of Oommen in further view of Tiedemann

Claims 40 and 44 recite “collect[ing] a first statistic for a first parameter while in an idle state and not exchanging data via the link, wherein collecting the first statistic occurs while performing a testing function; collect[ing] a second statistic for a second parameter different from the first parameter while in a connected state and exchanging data via the link.” Collecting the first statistic thus occurs, in both claims 40 and 44, while in the idle state.

The Office Action cites Numminen, col. 10, ll. 1-8 which generally describes an idle mode. Office Action, p. 34. In the Numminen idle mode, “it [mobile station or terminal] receives from base stations certain downlink messages and sends occasionally location

update messages uplink.” *Id.* This describes idle mode operation wherein testing is not being performed, nor collecting statistics. Collecting of statistics does not occur in idle mode within Numminen, and is not shown by the cited passage.

The Office Action seeks to address this deficiency by surmising “it [the mobile station or terminal] is for most of the time in the so-called idle mode (i.e. idle state) in which it receives from base stations certain downlink messages....” Office Action, p. 55. The claim language, however, is “collect[ing] a first statistic for a first parameter while in an idle state and not exchanging data via the link, wherein collecting the first statistic occurs while performing a testing function...” The Numminen design is simply in idle mode and receives downlink messages and occasionally sends location update messages – it does not, as expressly claimed, collect a first statistic for a first parameter and not exchange data via the link nor collect the first statistic while performing a testing function. The Office Action is seeking to embellish, in some manner, Numminen’s idle state functionality in a manner clearly contrary to the express language of the reference.

The Office Action finds the limitation of collecting the first statistic while performing testing in Tiedemann, said to exist at col. 14, ll. 40-57. (Office Action, p. 57). This strained reading of Tiedemann in combination with Numminen in actuality shows nothing similar to “collecting a first statistic for a first parameter while in an idle state and not exchanging data via the link, wherein collecting the first statistic occurs while performing testing...” This limitation requires collecting a first statistic for a first parameter while performing testing in an idle state and not exchanging data via the link. The Numminen reference fails to collect statistics or collect statistics while in an idle state or operate in an idle state while performing testing. The cited Tiedemann paragraph speaks of detecting CRC errors during testing but says nothing about an idle state. In reality, the combination of these references, while only marginally employing wording having some broad, general similarity to the language employed in the claim, does not show “collecting a first statistic for a first parameter while in an idle state and not exchanging data via the link, wherein collecting the first statistic occurs while performing testing...” These references have nothing to do with each other in this respect and cannot be said to show the claimed

limitation, alone or in combination. In other words, the combination of Numminen and Tiedemann does not show “collecting a first statistic for a first parameter while in an idle state and not exchanging data via the link, wherein collecting the first statistic occurs while performing testing”.

The Oommen reference is not cited in opposition to this “collecting a first statistic” limitation, and thus the combination of Numminen, Oommen and Tiedemann does not render claims 40 or 44 obvious, as the claims include limitations not shown by the cited combination. Claims depending from allowable claims 40 and 44 are allowable as they include limitations not shown by the combination of Numminen, Oommen and Tiedemann.

Combination of References

The combination of up to five separate disparate references, combined with stretching the references to appear similar to the claim language when in fact they are not, demonstrate ex post or hindsight reasoning in rejecting the present claims.

Applicants disagree that one of ordinary skill in the art would have a reason to combine the features disclosed in the references presented, but particularly the most numerous references provided (Numminen, Wilding, Dipperstein, Gillespie, Gopalkrishnan, etc.) Applicants submit that the combination of as many as five separate and distinct references is unreasonable, and in many cases the three references combined is also unreasonable, and such combinations demonstrate ex post or hindsight reasoning in an attempt to piece together the claimed invention. Disparate inapposite portions of the cited references are simply pulled out of thin air and combined with other disparate references in an attempt to deprecate the claimed invention, which is improper.

The PTO has the burden of establishing a prima facie case of obviousness under 35 USC §103. The Patent Office must show that some reason to combine the elements with some rational underpinning that would lead an individual of ordinary skill in the art to combine the relevant teachings of the references. *KSR International Co. v. Teleflex Inc.*, No. 04-1350, 550 U.S. ____ (2007); *In re Fine*, 837 F.2d 1071, 1074 (Fed. Cir.

1988). Therefore, a combination of relevant teachings alone is insufficient grounds to establish obviousness, absent some reason for one of ordinary skill in the art to do so. *Fine* at 1075. In this case, the Examiner has not pointed to any cogent, supportable reason that would lead an artisan of ordinary skill in the art to come up with the claimed invention.

None of the cited references, alone or in combination, teaches the unique features called for in the claims. It is impermissible hindsight reasoning to pick a feature here and there from among the references to construct a hypothetical combination which obviates the claims.

It is impermissible, however, simply to engage in a hindsight reconstruction of the claimed invention, using the applicant's structure as a template and selecting elements from references to fill the gaps. [*citation omitted*]

In re Gordon, 18 USPQ.2d 1885, 1888 (Fed. Cir. 1991). As previously noted, distortion occurs using hindsight reasoning and ex post reasoning is disapproved. *KSR International Co. v. Teleflex Inc.*, No. 04-1350, 550 U.S. _____ (2007).

A large number of devices may exist in the prior art where, if the prior art be disregarded as to its content, purpose, mode of operation and general context, the several elements claimed by the Applicant, if taken individually, may be disclosed. However, the important thing to recognize is that the reason for combining these elements in any way to meet Applicant's claims only becomes obvious, if at all, when considered from hindsight in the light of the application disclosure. The Federal Circuit has stressed that the "decisionmaker must step backward in time and into the shoes worn by a person having ordinary skill in the art when the invention was unknown and just before it was made." *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1566 (Fed. Cir. 1987). To do otherwise would be to apply hindsight reconstruction, which has been strongly discouraged by the Federal Circuit. *Id.* at 1568.

To imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of

record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher.

W.L. Gore & Assoc. v. Garlock, Inc., 721 F.2d 1540, 1553 (Fed. Cir. 1983). Therefore, without some reason in the references to combine the cited prior art teachings, with some rational underpinnings for such a reason, the Examiner's conclusory statements in support of the alleged combination fail to establish a prima facie case for obviousness.

See, KSR International Co. v. Teleflex Inc., No. 04-1350, 550 U.S. ____ (2007)

(obviousness determination requires looking at "whether there was an apparent reason to combine the known elements in the fashion claimed...", citing *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness," KSR at 14).

Several reasons supporting the combination of references are provided in the present Office Action, but most if not all are merely conclusions used to justify choosing references based on aspects presented in the claims, or broad generalizations of desirable performance for any device or method in this field of technology. For example, the justification for combining Numminen with Tiedemann is said to be "'by updating various variables related to communication link status, a node keeps an up to date information of the current condition of the links; thus enabling it to modify, most efficiently and reliably, link parameters to enable seamless communication.'" Office Action, p. 21. This is nothing more than a vague, general statement of operation desirable in virtually any communication system. It is always beneficial to improve operation, cost, efficiency, and so forth, but the question is what reasoning would have been used by one to take the teachings of, say, Tiedemann and modify them in a manner consistent with Numminen, or Gopalkrishnan with Numminen, Walding, Dipperstein, and Gillespie in the manner suggested. Here, no such reason has been articulated. Conclusory reasoning such as that presented is improper hindsight reconstruction of the invention, and for this further reason, all pending claims are allowable over the cited references.

Accordingly, it is respectfully submitted that all pending claims fully comply with 35 U.S.C. § 103.

CONCLUSION

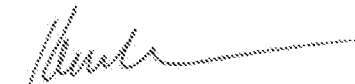
In view of the foregoing, it is respectfully submitted that all claims of the present application are in condition for allowance. Reexamination and reconsideration of all of the claims are respectfully requested and allowance of all the claims at an early date is solicited.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Applicants believe that no fees are due in accordance with this Response beyond those included herewith. Should any fees be due, the Commissioner is hereby authorized to charge any deficiencies or credit any overpayment to Deposit Account No. 17-0026.

Respectfully submitted,

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